

05-13-02 #11/Appeal
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Henry H. Jenkins

Examiner: C. Dexter
Art Unit: 3724

Serial No: 09/580,411

Filed: May 30, 2000

For: COMPENSATING BLISTER DIE CUTTER APPARATUS

9213 Chillicothe Rd.
Kirtland, OH 44094
April 30, 2002

Assistant Commissioner for Patents
Washington, D.C. 20231

APPEAL BRIEF

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Dear Sir:

REAL PARTY IN INTEREST

The real party in interest is Henry H. Jenkins, the named inventor.

RELATED APPEALS AND INTERFERENCES:

There are no other appeals or interferences which will directly affect or have a bearing on the Board's decision in this pending appeal

STATUS OF THE CLAIMS:

The status of Claims 1-3 which are under appeal and which are found in the attached appendix pursuant to 37 CFR Section 1.192(c)(9) is they have all been finally rejected. Claim 3 under 35 USC Section 112, 1st paragraph; Claim 3 under 35 USC Section 112, 2nd paragraph; Claims 1 and 3 under 35 USC Section 102 as anticipated by

the reference of Carll (U.S. 2,313,801); and Claim 2 under 35 USC 103 as unpatentable over the reference of Carll (U.S. 2,313,801).

STATUS OF AMENDMENTS

All amendments submitted during the prosecution have been entered and the claims as amended are found in the attached appendix. An amendment to the drawings was approved by the Examiner in the final action dated January 23, 2002.

SUMMARY OF THE INVENTION

The present invention solves a problem found in the art of making blisters from a sheet of polymeric material which blisters are conventionally formed as a spaced plurality on the sheet(Figures 1-3). The blisters are cut into individual blisters(Figures 4-5) from the sheet and are used to carry product as the blister is attached to a piece of substrate. The blisters as cut from the sheet have a bowl or dish shape with a rim or flange 24 extending 360 degrees around the opening to the dish shape. The flanges are glued to the substrate to hold the blisters in position on the substrate. This problem is discussed in the specification for example on pages 1, 3 and 4.

Graphically the problem and its solution are found in the drawings of Figures 1-7. Figures 1-3 illustrate a large sheet of polymeric material upon which blisters 22 have been formed in a conventional molding process. As discussed in the specification , when the sheet of blisters of Figure 1 is formed, shrinkage occurs which is indeterminate in amount and also varies from batch to batch of the polymeric material . When the sheet of blisters is placed in a conventional cutting mechanism with fixed cutters and the

shrinkage has been sufficient, the blisters as cut from the sheet may take the form as illustrated in Figures 6 and 7, with the perimeter of the cut blister being uneven. This uneven perimeter or flange is undesirable because it is not pleasing in appearance and does not lend itself to a reliable sealing surface to be attached to a substrate.

The present invention solves this problem by means of the adjustable die cutter mechanism shown generally in Figures 8 and 9 and in more detail in Figures 10-14.

In Figures 8 and 9 there is illustrated for example six (6) blister die cutter units 34-39 mounted on base 31 and each are capable of movement in all directions on the base and relative to each other.

This movement is accommodated by that structure shown in detail in Figures 13 and 14. Adjustment members 70 extend through enlarged holes ⁷²70 in the top board 50, the backup plate 46 and the bottom board 44 and are threadably secured to the base 31. This permits the described movement within the limits of the tolerance between the holes 72 and the outside diameter of members 70.

The die cutter mechanism is used for example by taking the sheet of blisters illustrated in Figures 1-3 and inserting the blisters 22 into the openings 62 of the respective die cutter units 34-39 as illustrated in Figure 8. To the extent the blisters are located inconsistent distances from each other because of the shrinkage discussed above the individual units 34-39 will shift relative to each other to the positions illustrated for example in Figure 9. This is permitted because of the above referred tolerance between members 70 which reside within the enlarged holes 72.

As a result when the press is closed which contains the die cutter mechanism of the present invention the individual blisters will be severed from the sheet with consistent or symmetrical flanges or perimeters.

ISSUES

Issue 1

Did the Examiner correctly reject Claim 3 under 35 USC 112 (first paragraph), as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. In his rejection the Examiner stated as follows:

No support appears to be provided in the original disclosure for the blister die cutter unit being movable relative to the base member through a range of 360 degrees as now set forth in lines 13-14. Rather, support is provided only for structure that permits lateral movements through a range of 360 degrees by virtue of the holes 72 being round and the diameter of the adjustment member 70 being substantially less than the diameter of the hole.

Issue 2

Did the Examiner correctly reject Claim 3 under 35 USC (2nd paragraph), as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In his rejection the Examiner stated as follows:

In claim 3, lines 13-14, the recitation “permitting movement of said blister die cutter unit relative to said base member through a range of 360 degrees” is vague and indefinite as to what is being claimed particularly as to what movement is being set forth, and it is suggested in line 13 to insert—lateral— before “movement” or the like.

Issue 3

Did the Examiner correctly reject Claims 1 and 3 under 35 USC 102(b) as being clearly anticipated by Carll, U.S. Patent No. 2,313,801.

Issue 4

Did the Examiner correctly reject Claim 2 under 35 USC 103 (a) as being unpatentable over Carll, U.S. Patent No. 2,313,801. In his rejection the Examiner stated as follows:

Carll discloses a cutter apparatus with almost every structural limitation of the claimed invention but lacks a bottom board, a backup plate, and threaded members connecting the bottom board backup plate and top board. However, the Examiner takes Official notice that such cutting subassemblies are old and well known in the art and provide well known benefits such as enabling a particular cutting die to be quickly and efficiently installed as a unit, for example, replacing a cutting die subassembly of having one pattern with a cutting die subassembly from storage, the replacement cutting die having another pattern. Therefore, it would have been obvious to one having ordinary skill in the art to provide the cutter apparatus of Carll with additional structure to create an easily removable subassembly for the well known benefits including those described above.

GROUPING OF THE CLAIMS

In the rejection of Claims 1 and 3 as clearly anticipated by Carll, applicant contends that these two (2) claims are separately and distinctly patentable over the rejection. In the argument herein below applicant points out the separate patentability of the claims.

ARGUMENT

Applicant wishes to point out at the beginning of this brief that he substantially disagrees with the Examiner's view of his arguments and as found on page 5 of the office

action of January 23, 2002. The Examiner comments that Figure 3 of the reference Carll discloses a connection 38 that has all the necessary structure to permit the claimed movement. Applicant would point out that this portion of the Carll disclosure is no more relevant than that illustrated in Figure 2. In neither of these disclosures is there permitted any movement between the base 12 of Carll and each of his individual die members 14.

As Carll points in his specification at page 2, column 2, line 39:

In operation, each individual die member 14 is accurately adjusted to register with its respective label and the bolts 32 tightened to maintain the blocks in their adjusted position.

As noted from a review of applicant's disclosure and claims the invention of applicant is totally different and distinct from Carll in that applicant's die members are free to move relative to the base.

Issue 1 has to do with the rejection of Claim 3 under the first paragraph of 35 USC 112. The gist of the Examiner's rejection here appears to be the contention that there was no basis in the original disclosure for the recitation in the claim "said adjustment members having a smaller diameter than said given diameter permitting movement of said blister die cutter unit relative to said base member through a range of 360 degrees".

Applicant is of the view and takes the position the Examiner is incorrect in this rejection because the description and drawings of the application as filed illustrate clearly this claim language and how the structure functions. The problem which the present invention seeks to solve is fairly well set forth on page 1 of the specification and extends

onto page 2 thereof. The structure of the invention which brings about the advantages is described on pages 5 and 6 in detail and is illustrated best in Figures 8 through 14.

The description beginning on line 1 of page 7 of applicant's specification pretty well describes the language of Claim 3 which the Examiner maintains is inadequately disclosed. It will be noted that applicant here describes taking a sheet of blisters 22 into contact with the structure of Figure 8 so that a given blister 22 is pushed into the cavity 62 of a given die cutter unit 34-39 causing the die cutter units 34-39 to shift to the position of Figure 9. This produces the product of Figures 4 and 5.

The more detailed structure of Figures 10-14 and the description on page 6, lines 8-15 describes how the die cutter units can move relative to each other and to the base through the 360 degrees recited in the Claim 3. It will be noted that the members 70 are recited as extending through holes 72 in board 50, plate 46 and board 44 and are threadably secured to the base 31 and since they have a smaller diameter than the holes the movement discussed above can take place. The drawings clearly illustrate and enable any person skilled in the art to make the claimed structure and to use it. The best mode contemplated by the inventor of carrying out the invention is the one disclosed in this application as filed.

For these reasons it is urged that the Examiner's 35 USC 112 (1st paragraph) rejection should be reversed.

In respect to Issue 2 the applicant's position is analogous to Issue 1. In respect to Issue 1 applicant has pointed where in the description and drawings the claim language is

supported. Since the same claim language is in dispute the same arguments apply and are incorporated herein by reference. The movement that is being claimed in rejected Claim 3 is that movement which is discussed in Issue 1 and which enables the die cutter units to move relative to the base member to bring about the advantages illustrated in the finished blisters as compared to blisters produced by prior art cutters.

For these reasons it is urged that the Examiner's 35 USC 112 (2nd paragraph) rejection should be reversed.

Issue 3 has to do with the rejection of Claims 1 and 3 as anticipated by Carll (US 2,313,801). It is without serious argument that in order for a reference to anticipate a claims subject matter the reference must show and disclose every element which the claim contains. It is applicant's position that the present claims and disclosure solve a problem which is inherent in the very reference the Examiner has used in his rejection. The reference of Carll does not in spirit anticipate the claimed invention and does show and disclose on an element by element basis what is contained in the claims.

Speaking first to the spirit of the invention, it will be noted the reference of Carll teaches fixing each of the die members 14 to the base 12 so there is no movement there between. In contrast, in applicant's invention the die cutters are free to move relative to the base of the unit so as to accommodate shrinkage of the polymeric material and resultant inconsistencies in the distance between blisters formed on the sheet.

With regard to specific structural recitations found in Claims 1 and 3 which are not found in Carll it is believed the following to be substantial differences. Referring to

Claim 1 there is recited a lost motion connection connecting the support member to the base member which permits lateral movement of each die cutter unit relative to the base and relative to each other through a range of 360 degrees. This cannot be found in Carll. Referring to Claim 3 there cannot be found in Carll the vertical holes through the top board of a given dimension with adjustment members extending through these holes and having a smaller dimension than the given dimension. This permits movement of the blister die cutter unit relative to the base member through a range of 360 degrees. For these reasons Claims 1 and 3 are not anticipated by Carll. These are the reasons applicant urges that Claims 1 and 3 are separately and distinctly patentable.

Issue 4 has to do with the obviousness rejection of Claim 2 over Carll. Applicant is of the view that one skilled in the art would be unable to arrive at the claimed invention without the exercise of patentable invention. One of the reasons Carll does not render obvious Claim 2 is that the problems solved by the present invention are inherent in the Carll structure. The structure of Carll cannot solve the shrinkage problems which applicant solves in producing blisters such as that shown in Figures 4 and 5 of the drawings. The die cutters shown in Carll are fixed in position and cannot move to accommodate the uneven locations of the blisters on a sheet of polymeric material. Carll clearly does not have the recited vertical holes having a given dimension with the adjustment members extending there through and having a smaller dimension and threaded to the base member. This permits the lateral movement referred to through a range of 360 degrees. For these reasons the invention claimed in Claim 2 is not obvious

in view of Carll.

APPENDIX

The rejected Claims 1-3 are set forth in the attached appendix.

SUMMARY

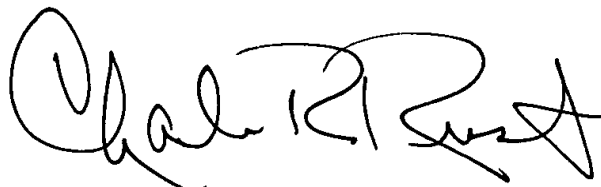
For the above referred to reasons discussed in detail under the headings of Issues 1 through 4, it is submitted the Examiner's final rejection of Claims 1-3 is incorrect and reversal is respectfully requested.

FEE

Please find enclosed check in the amount of \$160.00 for filing a brief in support of an appeal pursuant to 37 CFR Section 1.17(c). Please charge Woodling, Krost and Rust deposit account No. 23-3060 for any additional fees required..This brief is being filed in triplicate.

Respectfully submitted,

WOODLING, KROST and RUST

A handwritten signature in black ink, appearing to read "Charles R. Rust", with a stylized flourish at the end.

Charles R. Rust, Reg. No. 18,716

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TECHNOLOGY CENTER R3700

Assistant Commissioner of Patents
Washington, D.C. 20231

APPENDIX

1. (Twice Amended) A compensating blister die cutter apparatus including
a base member,
at least first and second blister die cutter units supported by said base member,
each said blister die cutter unit comprising a
a support member carrying a steel rule die,
a lost motion connection connecting said support member to said base
member permitting relative lateral movement of each die cutter unit
relative to said base member and relative to each other through a range of 360
degrees.

2. (Twice Amended) A compensating blister die cutter apparatus including

a base member,
at least first and second blister die cutter units supported by said base member,
each said blister die cutter unit comprising
a bottom board, a backup plate positioned on said bottom board,
a top board positioned on said backup plate,
a rule slot in said top board,
a steel rule in said rule slot and having a cutting edge,
a cavity formed in the central portion of said bottom board, backup plate and top board
as assembled,
threaded members connecting the bottom board, backup plate and top board together
to move as a unit,
vertical holes extending through the connected bottom board, backup plate and the top
board and having a diameter of a given dimension,
adjustment members extending through said vertical holes and being threaded into
said base member,
said adjustment members having a smaller diameter than said given dimension thus
permitting lateral movement of said connected bottom board, backup plate and top
board
relative to said base member through a range of 360 degrees.

3. (Twice Amended) A compensating blister die cutter apparatus including
a base member,
at least first and second blister die cutter units supported by said base member,

each said blister die cutter unit comprising a top board,
a rule slot in said top board,
a steel rule in said rule slot and having a cutting edge,
a cavity formed in the central portion of said top board,
vertical holes extending through said top board and having a diameter of a given
dimension,
adjustment members extending through said vertical holes and being connected to
said base member,
and said adjustment members having a smaller diameter than said given dimension
permitting movement of said blister die cutter unit relative to said base member through a
range of 360 degrees.